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SUPREME COURT OF THE UNITED STATES.

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Clerk.

OCTOBER TERM 1904.

No. 160.

GREER COUNTY, OKLAHOMA TERRITORY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

BRIEF OF COUNSEL FOR THE STATE OF TEXAS, DEFENDANT IN ERROR.

Gammel-Statesman Pub. Co., Austin, Texas.

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This case arises out of the anomalous condition of affairs which existed for a number of years with regard to the status of the territory between the north and south forks of Red River and the 100th degree of longitude. This territory was claimed by the State of Texas as part of her territory and was in 1860 created into a county of the State under the name of Greer County.

The county remained unorganized; which was the condition at that time and is still of a number of counties in Texas; until 1886, when an act was passed by the Legislature providing for its organization, under the provisions of which it was organized during that year, as Greer County, Texas. The following year (1887), under a provision of

the general laws of the State (arts. 4280-1, Revised Statutes) authorizing the issuance to each unorganized county in the State upon its organization, of patents for four leagues of land for school purposes, patents were issued to Greer County for four leagues of land lying in Hockley and Cochran counties in said State. Afterwards under the provisions of, and in conformity with, the general laws of Texas, the Commissioners Court of Greer County, Texas, sold and conveyed to Strain & Swinburne (who afterwards conveyed to William Cameron) all of said four leagues, except 7236 acres.

After the judgment and decree of this court in the case of The United States v. The State of Texas (162 U. S., 1-90), rendered March 16, 1886, whereby the question of the ownership of the territory referred to was decided adversely to the State of Texas, and in favor of the United States, the point decided being that this terirtory was not included within the boundaries of the State of Texas, an act was passed by the Congress of the United States entitled "An Act to establish and provide for the government of Greer County, Oklahoma," approved May 4, 1896. (Chap. 155, Acts 54th Congress, 29 U. S. Statutes at Large, p. 113.) Previously Congress had passed an act "To provide a temporary government of the Territory of Oklahoma," approved May 2, 1890. (Chap. 182, Acts 51st Congress, 26 U. S. Statutes at Large, p. 81.) Section 25 of this act provides that it shall not apply to what is known as Greer County until the question of title thereto is established, and directs the Attorney-General to institute the suit above referred to for that purpose. Greer County, Oklahoma, when organized under the provisions of the Act of May 4, 1896, set up claim to that portion of the four leagues of school land patented to Greer County, Texas, which had not been disposed of by Greer County, Texas.

Suit was instituted by the Attorney-General of the State of Texas against the heirs of William Cameron, deceased, and Greer County, Oklahoma Territory, to recover the four leagues of land. In the trial court the defendants pleaded separately, the heirs of Cameron claiming title to 10,476 acres sold and conveyed by Greer County, Texas, to Strain & Swinburne, and Greer County, Oklahoma, claiming title to the balance. In the trial court there was a severance, and judgment for the State against all of the defendants, the

court finding, as matter of law, that the territory in question never having been a part of the State of Texas, the act attempting to create the same into a county of the State was without authority and void, and that the issuance of patents to said county as a duly organized county of Texas was without authority and the patents void.

Upon appeal to the Court of Civil Appeals by the heirs of William Cameron the judgment of the District Court was affirmed (67 S. W. Rep., 348), but on writ of error to the Supreme Court this judgment was reversed and judgment rendered for the Camerons for the land claimed by them (95 Texas Rep., 545), the court holding that the title of purchasers who had bought from Greer County, Texas, while it was recognized as a county of this State should be protected. In their opinion the court, however, says: "The four leagues of land having been conveyed to Greer County in trust, for the benefit of the public schools within the county, as a county of the State, and the county having ceased to be a county of the State, whether its successor, Greer County, in the Territory of Oklahoma, can hold such of the lands as are not conveyed, is a different question. It is not before us in this case."

In the case at bar, upon writ of error to the Court of Civil Appeals, the judgment of the District Court was affirmed. (Opinion of Court of Civil Appeals, R., p. 30.) Writ of error to the Supreme Court from this judgment was applied for and refused. (R., p. 40.)

Section 6, Art. 7 of the Constitution of the State of Texas is as follows:

"Sec. 6. All lands heretofore or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and the title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners Court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not

include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal, shall be available fund."

The various acts of the Legislature of the State granting lands to counties for school purposes are printed as an Appendix to this brief.

By the provisions of the Act of March 13, 1875, to each county *in this State* was given four leagues of land. Provision was afterwards made for surveying and setting apart 325 leagues out of which each unorganized county when it was afterwards organized was to receive patents for its four leagues, which the Commissioner of the General Land Office was directed to issue. (Appendix.)

It may be noted that these various statutes which show the essential nature of the grant are not referred to or noticed in the brief for plaintiff in error.

The case is before this court on four assignments of error. (R. pp. 45-46.)

As to the first and second assignments of error it may be said that they rest upon a total misconception as to the legal conclusions of the Court of Civil Appeals, and the grounds upon which the judgment of the District Court was affirmed. The trial court found, as matter of law, that the patents were void *ab initio,* for the reason that Greer County, Texas, never in fact had any legal existence and for this reason did not find it necessary to inquire further. After the decision of the Supreme Court in the Cameron case to the effect that the patents were not void, having been issued at a time when the political department of the government claimed the territory embraced in Greer County as a part of the territory of Texas, it became necessary to inquire further as to what effect the wiping out of Greer County Texas, had upon the title to those lands still undisposed of. (Cameron Heirs v. The State, 95 Texas, 545.)

This case was before the Court of Civil Appeals upon

this question, and it was held that, conceding the patents to have been valid and to have conveyed good title to Greer County, Texas, and even conceding that Greer County, Oklahoma Territory, plaintiff in error here, succeeded to the legal title granted by the patents, "still, as the lands referred to were granted for public school purposes, and as Greer County (Oklahoma Territory) held them in trust for such purposes, still as Greer County will not and can not use them for such purposes within the limits of Texas, the State was entitled to have the patents canceled." (See opinion of Court of Civil Appeals, R. p. 30.) To this proposition none of the assignments are addressed, and the same may be said as to the brief of plaintiffs in error, and as to the motion for rehearing in the Court of Civil Appeals and the application for writ of error to the Supreme Court of Texas. (R. pp. 32-39.)

The Court of Appeals might have further held, and undoubtedly would have so held, if it had been considered necessary to sustain the judgment of the trial court, that in no aspect of the case had Greer County, Oklahoma, plaintiff in error here, succeeded to the title granted to Greer County, Texas, by the patents.

The Constitution of Texas (Art. IX), authorized the Legislature to create counties for the convenience of the people and to change their boundaries at will, subject only to certain limitations, as to area. It has been a common practice to create new counties out of portions of existing ones, and while it has not often been done, still the Legislature has exercised the power to disorganize an organized county, abolish its county government, and attach the territory to another county for governmental purposes. They are municipal corporations. (Constitution, sec. 1, art. XI; art. 789, Revised Statutes, 1895.)

It was to this entity created by the Legislature, as a legal subdivision and municipal corporation of the State of Texas, that the four leagues of land were granted, and when this entity became nonexistent, as the effect of the decision of this court in the case of The United States v. Texas, it can no more be said that the subsequently created entity of Greer County Oklahoma, succeeded to the title to these lands, than it succeeded to any of the other rights inuring to Greer County, Texas, as a legal subdivision of the State, for instance, in its school lands or school fund, its

University lands, and the endowment of the various other eleemosynary and educational institutions out of the public lands of the State, in all of which Greer County, Texas, as long as it remained a legal subdivision of the State, and the inhabitants thereof as long as they remained citizens of such legal subdivision, were entitled to share. Counsel for plaintiff in error have never seemed to grasp the essential facts that this grant was to Greer County, Texas, as a municipal corporation and legal subdivision of the State in trust for the benefit of the inhabitants as citizens of the State of Texas, and of the public schools established by the State and supported by the State in that county, and subject at all times to legislative control, and that plaintiff in error, Greer County, Oklahoma, is in all of the essential features of this case as distinct and alien to Greer County, Texas, as is any other county of Oklahoma. It is of no consequence, whatever, that in providing for the organization of a territorial government for Oklahoma Territory by Congress, the same territory embraced in the Texas county is embraced in the Oklahoma county and the old name is retained.

In all of their pleadings and throughout their brief counsel speak of Greer County, the grantee in the patents, and Greer County, the plaintiff in error in this case, as one and the same, and address themselves only to a case resting upon this premise. Argument is unnecessary to show the fallacy of this position.

We submit that the third and fourth assignments of error are equally foreign to the merits of this controversy.

Whatever contract there was by virtue of the patents, was between the State of Texas and Greer County, Texas, a legal subdivision of the State, now nonexistent, and if there has been any impairment of this contract, it does not in any way concern plaintiff in error, or affect its rights. But there has been in no sense an impairment of the obligation of this contract by the decisions of the Texas courts, and finally neither in the judgment of the State court nor in the assignments of error in this court, nor in the brief of counsel, is there any reference to any *legislation* with reference to the matter. The case was decided upon the general principles of law governing the case and applicable to the facts

presented. The provisions of the Federal Constitution (section 10, article 1) do not apply.

Knox v. Exchange Bank, 12 Wall., 379.

Central Land Co. v. Laidley, 159 U. S., 103-109.

The effect of the judgment of the State court was in no sense the taking of private property for public use without making compensation, as charged in the fourth assignment of error, even if, as is assumed by plaintiff in error, there were any inhibition in the Federal Constitution, of such action by the State.

As to the fifth assignment of error, while it may be true as stated by the Supreme Court of Texas in their opinion in the Cameron case (95 Texas, 545-552), that the title of Cameron "is not different from what it would have been had Greer County been indisputably a part of the State from its annexation until 1895, and had it, at the latter date, been ceded to the United States," it does not necessarily follow that this would be true as to the title set up by plaintiff in error here. In that case Cameron had succeeded, by regular conveyances, to the title vested by the patents in Greer County, Texas. There has been in no sense a succession by the plaintiff in error to that title as to the lands claimed here. Had there, however, been a cession of this territory to the United States, we submit that the lands granted to the *county* embracing this territory, would not have followed the cession but would have reverted to the State. Such cession would have destroyed the corporate entity known as Greer County, Texas, to which as a legal subdivision and municipal corporation of the State the grant was made. There could be no question of the power of the United States to deal with such territory as it saw fit: to create it into one or many counties, or to destroy its separate identity by making it a part of some other county, or other governmental subdivision. It would have been utterly subversive of the purposes of the grant to continue it to this territory and its inhabitants in their radically changed relations to the State. A cession of this territory by Texas to the United States in this respect would have had the same effect as the judgment of this court referred to. Such cession would have terminated the existence of Greer County, Texas, and there would have been no one to take and

hold the title to the lands and carry out the trust upon which they were granted; and it would also have terminated the relationship of the inhabitants of the territory to the State of Texas, as beneficiaries of the trust. The State could exercise no supervision or control over the action of the authorities of Greer County, Oklahoma, in regard to these lands or the proceeds when sold, as was contemplated, as a condition of the grant, as stated in quotation from Milam Co. v. Bateman (54 Texas, 165) on page 7 of brief of plaintiff in error.

The case for defendant in error is presented upon the following propositions:

First.

Greer County, Texas, the grantee in the patents, was a political subdivision and a de facto municipal corporation of the State of Texas, and its existence as such was terminated by the decision of this Court in the United States v. Texas (162 U. S., 1).

Constitution of Texas, art. 9, sec. 1; art. 11, sec. 1.

Revised Statutes of Texas (1895) arts. 756, 789.

Second.

The grant of four leagues of land for school purposes was not to the territory embraced within the limits of Greer County, nor to the inhabitants thereof, but to Greer County as a political subdivision and municipal corporation of the State of Texas, in trust for the benefit of the public free schools of the county as such, and to be administered under the general control and supervision of the legislature.

Constitution 1875, art. 7, sec. 6.

Act January 26, 1839.

Act February 5, 1840.

Act January 16, 1850.

Act March 13, 1875.

Act April 7, 1883 (Revised Statutes, 1895, arts. 4280-4281).

(This last act is the one upon which the patents were

issued, as stated in the face of the patents, and authorizes the issuance of patents to each county *of the State*, as it is organized, out of the 325 leagues surveyed for that purpose under the Act of March 16, 1882.)

Revised Statutes (1895) arts. 3902, 4270-4271, 4272. (See appendix.)

Palo Pinto Co. v. Gano, 60 Texas, 251.

Worley v. The State, 48 Texas, 12.

Third.

Upon the decision of this Court in the Greer County case (162 U. S., 1) and the surrender by the political department of the State government of all claim to or right of control over, the territory formerly embraced in the geographical limits of Greer County, Texas, the title to the lands involved in this suit was extinguished, and the lands reverted to the State.

1 Dillon Mun. Corp., sec. 169a.

Merriweth v. Garrett, 102 U. S., 472, 512, 513.

Bass v. Fontleroy, 11 Texas, 698, 706.

Fourth.

The grant was not a contract within the meaning of section 10, art. 1, Constitution of the United States.

East Hartford v. Hartford Bridge Co., 10 How., 491.

Newton v. Commissioner, 100 U. S., 566.

Fifth.

There is no question presented in the record, of legislation impairing the obligation of a contract.

Central Land Co. v. Laidley, 159 U. S., 103-109.

The answer of plaintiff in error, and its entire case as presented in the brief of counsel seem to be based upon the assumption that the four leagues of school land in controversy were granted and patented to it, notwithstanding it is sued as an organized county of the Territory of Oklahoma; and as such answers and claims the lands herein involved.

For instance in paragraph 2 of its answer (R. p. 5) it is said: "And for special demurrer to plaintiff's said amended original petition this defendant says that the allegations of plaintiff in said petition that the patents issued by L. S. Ross, Governor of the State of Texas, *to this defendant,* Greer County," etc. And again, in paragraph 5 (R. p. 6) appears the following:

"And for a further answer to plaintiff's said first amended original petition, the defendant, Greer County, comes and shows to the court that it is a body politic and corporate duly chartered and organized as such and was such body politic and corporate, on, to wit, *the 18th day of July, 1887, and for many years prior thereto,* and is now such body politic and corporate. This defendant further avers that the patents issued *to this defendant* on, to wit, July 18, 1887, were in all respects valid and legal patents and were issued in conformity to the authority and direction of the law-making department of the State of Texas, to wit, by virtue of divers and sundry acts of the Legislature of the State of Texas, and upon the issuance and delivery of said patents a full fee simple title to the lands described in plaintiff's petition was vested *in this defendant, Greer County,* by the terms of said patents."

Other allegations in the answer are to the same effect.

Now it happens that after the decision of the Supreme Court in the Greer County case the same territory formerly composing Greer County, Texas, was created by act of Congress, a county of the Territory of Oklahoma, of which it had become *de facto* as well as *de jure* a part, and of which it had always been *de jure* a part, under the name of Greer County. The existence of plaintiff in error dates from the passage of this act, May 4, 1896. (Chap. 155, acts Fifty-fourth Congress.)

It must be that upon this accidental circumstance of being the same territory and having the same name counsel predicate their assumption that it is the same thing, the same corporate entity.

Neither argument nor authority is necessary to show the utter fallacy of this assumption.

So far as the purpose of this argument and the decision of this case are concerned the two corporations are as foreign to, and as distinct from, each other as any other county

in Texas and any other county in Oklahoma Territory, or in any other State of the Union.

Nor is there any analogy between this case and the one where a municipal corporation is dissolved by act of the Legislature and another municipal corporation created by the Legislature of the same State embracing the same inhabitants and territory as in Broughton v. Pensacola, 93 U. S., 266, and other cases collected in notes to section 170, 1 Dillon Municipal Corporations, 251, 252.

Over Greer County, Texas, the grantee in the patents, the Legislature had plenary authority, limited only by the provisions of the State Constitution. By it it was created and by it it could be at any time destroyed as a municipal corporation and political subdivision of the State. It could at any time be disorganized and afterwards reorganized with the same or different boundaries. It held the school lands and their revenues and rents, together with the proceeds when sold, as a trustee only, for the benefit of the public free schools, established by the State as a part of her general system of public education, in Greer County, as a county of Texas, and subject, in the administration of the trust, absolutely, to the legislative will.

If it be argued that the grant was to Greer County for the benefit of the people, the reply is that it was for the benefit of the people as citizens of Texas, and not as a mere aggregation of people living on a certain portion of the earth's surface. The language of the statute is that the lands shall belong to the *county* (Art. 4270, Rev. Stats.) and that the proceeds when sold shall be held by such county "alone as a trust for the benefit of public free schools therein." (Art. 4271, Rev. Stats.)

The Legislature of Texas has absolutely no control over Greer County, Oklahoma Territory, in the administration of the trust. Indeed, if the title of defendant to the lands sued for be upheld, the county will take the lands discharged of any trust and may dispose of them as the political authority of the Territory may see proper.

This is a unique case, so far as the facts are concerned. If the authorities cited in this brief do not afford a precedent for the resumption by the State of her ownership of these lands, we submit the case with confidence that the court in

its wisdom will either find a precedent for such action, or, if necessary, make one.

C. K. Bell
Attorney-General.

T. S. Reese
Assistant Attorney-General.
For the State of Texas, defendant in error.

APPENDIX.

Constitution of Texas (1875). (Art. 7, Section 6.)

"Sec. 6. All lands heretofore or hereafter granted to the several counties of this State for educational purposes are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the commissioners court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties along as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon and other revenue, except the principal, shall be available fund."

Act January 26, 1839.

"Sec. 1. Be it enacted by the Senate and House of Rep-

resentatives of the Republic of Texas in Congress assembled, That each county of this Republic shall have three leagues of land surveyed and set apart for the purpose of establishing a primary school or academy in said county, which said land shall be located and surveyed by the county surveyor or his deputy, in each county, and be paid the fees now allowed under the land law, out of the county treasury: Provided, There is that quantity of good vacant land in the counties: And further provided, That said land may be surveyed in any sized tracts: Provided, That said land shall not be surveyed in tracts less than one hundred and sixty acres."

"Sec. 6. Be it further enacted, That none of the lands appropriated and set apart by this act of for the purpose of education, shall be disposed of in any manner except by lease until the expiration of three years, and none of said lands shall be disposed of by lease for a longer term than three years."

Act of January 16, 1850.

"Sec. 1. Be it enacted by the Legislature of the State of Texas, That each and every county in this State, which has been established and organized since the sixteenth day of February, in the year one thousand eight hundred and forty-six, or which may hereafter be established and organized by the law, shall have surveyed and set apart four leagues of land for the purpose of education, which locations and surveys may be made upon any vacant and unappropriated lands within the limits of the State."

Act of March 13, 1875.

"Section 1. Be it enacted by the Legislature of the State of Texas, That all organized counties in this State, which have not received a grant of lands for purposes of education, and all counties hereafter created, shall be entitled to have issued to each of them certificates for four leagues of land, to be located anywhere on the unappropriated public domain of this State."

Revised Statutes 1895. (Act of 1883.)

"Art. 3902. The proceeds of any leasing or renting of lands heretofore granted by the State of Texas to the several counties thereof for educational purposes shall be appropriated by the commissioners courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands or any part thereof shall be invested in like manner as the Constitution and law requires of proceeds of sales of such lands, and it shall be unlawful for the commissioners court of any county to apply said proceeds, or any part thereof to any other purpose, or to loan the same, or to invest the same, except as above required."

"Art. 4270. All lands granted to counties for educational purposes, under the provisions of this chapter or any former law, shall belong to such counties respectively, and the titles thereto shall be fully vested in said counties; and no adverse possession or limitation shall ever be available against the title of any county to such lands."

"Art. 4271. Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners court of such county; and the proceeds of any such sale shall be invested in bonds of the State of Texas, or of the United States, and held by such county alone as a trust for the benefit of public free schools therein, only the interest theron to be used and expended annually."

"Art 4272. In the sale of county school lands, under the provisions of the preceding article, the actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by the commissioners court, which price shall not include the value of existing improvements made thereon by such settlers."

"Art. 4280. The three hundred and twenty-five leagues of land heretofore surveyed under the provisions of an act

entitled "An act to provide for designating and setting apart three hundred leagues of land out of the unappropriated public domain, for the benefit of the unorganized counties of the State, and to provide for the survey and location of same," approved March 16, 1882, is set apart and shall constitute a reservation out of which each of the unorganized counties of this State, as it may be organized, shall be entitled to receive four leagues of land for free school purposes, and out of which such organized counties of this State as may have located their certificate for four leagues of school land in conflict with or upon land already appropriated by valid prior location and survey, or which from any cause have failed to get title to their four leagues of school land, shall be entitled to receive so much of said land as may be necessary to secure to any such county the number of acres it may be entitled to from any cause, or that may be declared to be in conflict by the Commissioner of the General Land Office."

"Art. 4281. Each of said leagues of land shall be numbered by the Commissioner of the General Land Office, in the order in which it was surveyed by the contractor or contractors, beginning at number one and extending to three hundred and twenty-five, and as each of the unorganized counties in the State shall be organized such county shall be entitled to the first four leagues out of the reservation authorized by the foregoing provisions, which shall not have been patented to other counties for free school purposes. Upon the payment to the Treasurer of the State the actual cost of surveying fees and legal interest thereon from time of payment by the State, and upon the payment of such costs and interest, the Commissioner of the General Land Office is required to issue patents to said county for four leagues of land as above provided, but said counties shall be required to pay patent fees for said patents."

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SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

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We beg the indulgence of the court for a brief reply to the supplemental brief filed for plaintiff in error.

Reference is made in this supplemental brief to an Act of the Legislature of Texas of April 13th, 1897, setting apart and appropriating the four leagues of school land patented to Greer County, Texas, to the support of public free schools, and directing the Attorney-General to bring suit to cancel the patents issued therefor.

An inspection of the record will show that the right of the State to recover was not predicated upon this statute, nor has the judgment of the State court been attacked on the ground that *this statute* impaired the obligation of the

contract arising upon the patents. The State sought recovery upon grounds entirely independent of this statute and the judgments of the trial court and Court of Civil Appeals are based entirely upon other grounds.

The contention of plaintiff in error, as shown by the third assignment of error in the Court of Civil Appeals (Rec., p. 25), the motion for rehearing (Rec., p. 32), the third assignment of error in the application for writ of error to the Supreme Court of the State (Rec., p. 38), and the third assignment of error in this court (Rec., p. 46), is that the *judgment of the State courts* impaired the obligation of contract in violation of the Federal Constitution.

Very properly no reference was made by counsel for plaintiff in error in their assignments of error, or in their brief, to this Act of 1897, as it in no way affected the decision of the case, and for this reason no reference is made to it in brief for defendant in error.

Unquestionably the Legislature of Texas assumed, after the decision in the case of United States v. Texas, that these lands had reverted to the State and proceeded to make proper appropriation of them, and inasmuch as it was known that Cameron and Greer County, Oklahoma, set up claims adverse to the State, the Attorney-General was directed to bring suit to recover the lands. The State might have taken possession of the lands with strong hand. Surely, it should take no detriment from the fact that it rather seeks to recover them in the due and orderly course of legal procedure. It is quite apparent from the record that consideration of the Act of 1897 referred to did not enter into the case, and that the judgment of the State courts would have been the same if this Act had never been passed. Upon this point we will stand by what was said by this court in Central Land Co. v. Laidley (159 U. S., 109):

"In order to come within the provision of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by some act of the Legislative power of the State, and not by a decision of its judicial department only."

It is cheerfully admitted that if the plaintiff in error had any rights in the premises they could not be divested by the

Act in question. No other contention has ever been made by the State, and there was no necessity for any reference to the Act.

It seems to us entirely irrelevant to this case that the United States have reimbursed Texas for money expended in providing a government for the territory comprising Greer County, in the support of education and the enforcement of the laws.

In pursuance of an Act of Congress, Texas presented her claim to the Secretary of the Interior charging itself with all money received from Texas, and rent of lands (none had ever been sold), and crediting itself with all money paid out for governmental purposes from the date of the creation of Greer County to the date of its severance, *de facto* as well as *de jure*, from Texas as the effect of the decision of this court, and the balance in favor of Texas has been paid upon the report of the Secretary of the Interior. There has also been paid to Texas by the United States, upon a supplemental report of the Secretary of the Interior, the value of the 10,476 acres of the four leagues of school lands patented to Greer County, Texas, which had been sold by Greer County, Texas, to Wm. Cameron, whose title had been upheld by the State court. (Cameron Heirs v. State, 95 T. R., 545.)

The balance of the four leagues, being the 7236 acres involved in the suit, was sold by Greer County, *Texas*, to Strain & Swinburne on a credit, and afterwards by virtue of judgment, foreclosure of vendor's lien and sheriff's sale, the title to this land was revested in Greer County, *Texas*. All of this was before the decision of this court in United States v. Texas, and before the plaintiff in error, Greer County, *Oklahoma*, had existence. Afterwards Greer County, Oklahoma Territory, plaintiff in error, upon coming into existence, set up its claim to this 7236 acres, hence this suit.

It is true also that if the judgment of this court should be against the State, the United States would be obligated to refund to Texas the value of the land involved, as it has that lost to Cameron, and we entertain no doubt that the United States will faithfully comply with this obligation.

Nevertheless, Texas does not consider that it would be acting in good faith with the United States to abate any effort to recover these lands, on account of the fact that the loss (if it loses) will eventually fall upon the United States.

The supplemental brief of plaintiff in error must be our excuse for this reference to matters which appear to us to be wholly irrelevant. It surely can not affect the question of title here involved that the United States has settled fairly with Texas for her expenditures on account of Greer County; has paid her for the Cameron lands lost to Texas, the purchase money of which was invested in a jail for Greer County; and will pay her for the lands here involved if they are awarded to Greer County, Oklahoma.

In the concluding paragraph of the original brief for defendant in error, the case is submitted "with confidence that the court in its wisdom will either find a precedent for such action (the resuming by the State of the ownership of the lands) or make one." It seems to us an extraordinary view to take that it would be judicial legislation for the court to *make* a precedent by the application of settled principles of law to a novel state of facts for which no precedent could be found.

(See supplemental brief of plaintiff in error, page 4.)

R. V. Harrison
.....,
Attorney-General.

T. S. Reese
.....,
Assistant Attorney-General. Counsel for the State of Texas, Defendant in Error.

C. A. Culberson,
of counsel.